IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1888 OF 2007

Smt.Shakuntala Shetty
and Anr. ..Petitioners.
Versus
The State of Maharashtra. ..Respondent.

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Mr.S.S.Sayyed, Adv. for the Petitioners.
Smt.P.H.Kantharia, APP, for the State.

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CORAM : S.B.MHASE AND
SMT.V.K.TAHILRAMANI,JJ.

DATED : 20TH NOVEMBER, 2007.

P.C.:-

1. Heard.

2. This is a Writ Petition seeking directions to register an offence in view of applications dated 15.3.2007 & 16.3.2007. Application dated 16.3.2007 is addressed to the Home Minister of the State of Maharashtra while application dated 15.3.2007 is addressed to Senior Inspector of Police, Dr.D.P.Marg Police Station, Bombay. Both the applications show a grievance made by nearabout 83 ladies to the effect that one Mr.Thomas is committing rape on them, collecting moneys from them and equally the brokerage commission and they have been induced and forced into

the prostitution. It appears that since the complaint was not registered on the basis of these applications, the petitioners have approached this Court. After issuance of the notice, at one stage it was noticed that there was no progress in the investigation. However, today the learned APP has shown us a file of preliminary investigation carried out by the police. The police have recorded statements of nearly 92-93 ladies who are allegedly signatories to the said complaint. However, on perusal of the statements, we find that the offence as made out in the complaint addressed to the police station and/or to the Home Minister has not been made out and, therefore, further investigation and/or filing of the charge-sheet and/or registration of the crime has not taken place.

3. The learned Advocate for the petitioners tried to rely upon a judgment of Supreme Court in the case of **State of Haryana Vs. Bhajan Lal**, reported in **AIR 1992 SC Page-604** to contend that once an information in respect of a cognizable offence has been received, it is not open for the investigating officer to find out whether the complaint is reliable, genuine or

credible, and then to proceed for an investigation. It is obligatory for him to register the crime. No doubt in the present matter the complaints, referred to above, discloses a cognizable offence. However, complaint dated 16.3.2007 was not addressed to the police station it was addressed to the Home Minister and, therefore, he is not supposed to register the offence, as at the most he is supposed to enquire into the matter. Further it appears that even though another complaint has been submitted to the Senior Inspector of Police, yet the offence has not been registered. But it appears that after filing of the Petition the enquiry has been conducted by the police officers, as stated above, and the enquiry discloses that no offence is made out. The ratio of **Bhajan Lal**'s case (supra) will not be appropriate in the facts and circumstances of the case in view of a recent decision of the Supreme Court in Appeal (Crl.) No.1432 of 2007 dated 12.10.2007 in the case of **Rajinder Singh Katoch Vs. Chandigarh Administration & Ors.**, wherein it was observed as under :-

> " Although the officer in charge of a police station is legally bound to

register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. .."

. It was further observed as under :-

" .. In any event, in a case of this nature where the authorities bound by law have already investigated into the matter and found that the allegations made by the appellant against respondent No.4 were not correct, it would not be proper for us to issue

> any direction to the respondent Nos.1 to 3 to lodge a first information report. .."

. Thereafter after considering the decision in the case of **Ramesh Kumari Vs. State (NCT of Delhi) & Ors.** reported in **(2006) 2 SCC 677** it was further observed that :-

> "We are not oblivious to the decision of this Court in Ramesh Kumari V. State (NCT of Delhi) & Ors. [(2006) 2 SCC 677] wherein such a statutory duty has been found in the Police Officer. But, as indicated hereinabove, in an appropriate case, the Police Officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

. Thereafter reference was made to the decision in the case of **Shashikant Vs. Central Bureau of Investigation & Ors.** reported in **(2007) 1 SCC 630**

wherein it is observed that evidently it was within the province of the police to commence a preliminary inquiry.

4. In view of above, we do not find any substance in the submission made by the learned Advocate for the Petitioners. We, therefore, are not in favour of entertaining the Petition. However, if the petitioners still feel that they have to ventilate their grievance, alternate remedy of filing a complaint before the Magistrate is available to them. In view of this, we refrain to entertain the Petition. Petition is hereby rejected.

[SMT.V.K.TAHILRAMANI,J.] **[S.B.MHASE,J.]**